

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND PROGRAM**

Meeting Date: March 25, 2009

Refunding Policy and Related Fees for the Bond Program

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Summary. Staff proposes a refunding policy with respect to requests for financing of refunding bonds. The current practice does not require an applicant to submit a new application along with an application fee in conjunction with the request, nor for small businesses to reimburse for fees generated from the costs of issuing the bond (i.e., Agent for Sale fee, issuer’s counsel fees, etc.). The proposed refunding policy would enable CPCFA to:

- ❖ require a new request for financing the refunding of bonds;
- ❖ charge a fee in conjunction with the refunding bond issue requested; and
- ❖ obtain reimbursement for costs and expenses associated with the refunding issue.

Staff also proposes to streamline the approval process for refunding issues wherein applicants are required to provide an update on the status of the project including significant changes to the project, if any, and current permitting. If adopted, the proposed change will be effective March 26, 2009.

Issue. Staff proposes a policy for the Authority’s processing of refunding bonds effective March 26, 2009 to ensure that CPCFA recaptures its costs with respect to refundings.

Background. On February 17, 2009 the American Recovery and Reinvestment Tax Act of 2009 (the “Act”) was signed into law by President Barack Obama. Section 1503 allows for the temporary modification of alternative minimum tax (AMT) limitations on tax-exempt bonds issued during 2009 and 2010. The Act also provides that tax-exempt interest on private activity bonds issued in 2009 and 2010 to currently refund private activity bonds issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the AMT.

A bond issued with the AMT can increase the costs of issuing tax-exempt private activity bonds imposed on State and local governments. Under current law, interest on tax-exempt private activity bonds is generally subject to the AMT. This limits the marketability of these bonds and, therefore, forces State and local governments to issue these bonds at higher interest rates. Last year, Congress excluded one category of private activity bonds (i.e., tax-exempt housing bonds) from the AMT. The Act would exclude the remaining categories of private activity bonds from the AMT if bonds are issued in 2009 or 2010. The Act also allows AMT relief for current refunding of private activity bonds issued after 2003 and refunded during 2009 and 2010. CPCFA currently has 61 outstanding bonds that were issued between January 1, 2004 and December 31, 2008 totaling approximately \$1.4 billion.

Agenda Item – 4.B.

The Authority has three types of fees that it can charge to applicants seeking and/or receiving bond financing: application fees, general fees and Small Business Assistant Fund Fees (SBAF). Currently, when a bond is re-issued the company does not pay an application fee. Section 8034 of the CPCFA Regulations allows CPCFA to charge fees for reasonable and necessary administrative and program expenses connected with the sale of bonds (0.002 of par) and also all “reasonable and necessary ... expenses properly allocable to the proposed financing”—General Fees. The par-based fee is waived for small businesses pursuant to Section 8043(b). Section 8035(a) of the CPCFA Regulations states that the Authority shall charge an application who is not a small business as defined in Section 8020 a fee in addition to the fees required by Section 8033 and 8034—SBAF. The additional fee shall be one percent (0.01) of the face value of any tax exempt bonds issued and three tenths of one percent (0.003) of the face value of any taxable bonds issued; provided, that in connection with the issuance of taxable bonds for which the 0.003 fee is charged, if such taxable bonds are refinanced with our converted to tax exempt bonds, the application shall pay an additional fee for deposit into the SBAF in the amount of seven tenths of one percent (0.007) of the face value of such taxable bonds. In the case of refunding or conversion of bonds, the fee percentage applicable on the date the original bonds were issued will be used to determine if additional SBAF fees are collectable. If the company did not pay a SBAF fee originally, the current fee percentage will apply to refundings or conversions. If federal tax law or other legal provisions prevent the imposition of the above fees, each fee shall be the maximum that can legally be charged. [The applicant may be eligible to apply for additional volume cap allocation to pay for the costs of issuance \(see Section 141 of the Internal Revenue Code for eligibility requirements\).](#)

Furthermore, Section 8035(d) states that if an applicant refinances existing bonds with the issuance of new bonds, it shall receive a credit against the fee charged pursuant to this section in an amount equal to the net SBAF paid on the earlier bonds.

Small businesses currently do not pay any General or SBAF fees—nor do they receive SBAF on refundings. Staff anticipates receiving a deluge of requests over the next two years to refund bonds issued between January 1, 2004 and December 31, 2008, with a lack of fees generated to cover the expenses incurred by staff.

Current Fee Structure for New Bond Issues.

- ◆ **Application Fee:** 0.0005 (1/20 of 1%) of total application amount, not to exceed \$5000. This fee is payable with initial request for financing.
- ◆ **General (Administrative) Fee:** 0.002 (2/10 of 1%) of total amount of bonds issued. The application fee is deducted from the administrative fee. This fee is payable upon closing by large businesses only.
- ◆ **SBAF Fee:** 0.01 (1%) of total amount of tax-exempt bonds issued; .003 (3/10 of 1%) of total amount of taxable bonds issued, then .007 (7/10 of 1%) upon conversion of taxable bonds to tax-exempt. This fee is payable upon closing by large businesses only.

- ◆ **Other State Fees:** State Treasurer’s Office – Public Finance Division (PFD) agent for sale fee; California Debt Limit Allocation Committee (CDLAC); California Debt and Investment Advisory Commission (CDIAC); CPCFA issuer’s counsel costs, and any other applicable costs. *Note—Small businesses do not pay these fees and costs as they are paid through the SBAF assistance. Additionally, CPCFA has waived CPCFA issuer’s counsel costs on all new bond issues over the past couple of years.*

Proposed Refunding Policy.

All Businesses regardless of size:

- ◆ Submit a streamlined request for refinancing bonds that includes
 - ❖ an update on the status of the project including significant changes to the project, if any, and current permitting; ~~and~~
 - ❖ applicable fee (0.0005 of the amount of financing – minimum of \$250.00 up to a maximum of \$5,000.00); ~~and~~
 - ❖ a request (optional) to seek additional volume cap allocation to help cover costs of issuance (must meet Internal Revenue Code requirements). Approval subject to approval by CPCFA Board.
- ◆ Reimburse CPCFA for Issuer’s Counsel costs.
- ◆ Pay for all Costs of Issuance including Other Fees* (e.g., STO-PFD Agent for Sale Fee, CDIAC fees, etc.).

Large Businesses will be charged:

- ◆ A General (Administrative) Fee and
- ◆ A SBAF fee (*recalculated to determine if an additional fee is owed*).

Small Businesses (less than 500 employees) will not receive any further SBAF subsidy.

~~**Note: The maximum amount of bond proceeds that can be used for costs of issuance is 2%. Unless the maximum 2% was not used in the original bond issue, the costs of issuance on refunding bonds must be paid directly by the company.*~~

Recommendation. Staff recommends approval of the proposed Refunding Policy and Related Fees for the Bond Program as described in the staff summary to become effective March 26, 2009.

EXHIBIT A

SUMMARY OF CURRENT NEW MONEY BOND ISSUANCE AND PROPOSED REFUNDING POLICY			
New Bond Issue (Small Business)	New Bond Issue (Large Business)	Refunding (Small Business)	Refunding (Large Business)
Application Fee: 0.0005 (1/20 of 1%) of total application amount, not to exceed \$5000. Payable with initial application.	Application Fee: 0.0005 (1/20 of 1%) of total application amount, not to exceed \$5000. Payable with initial application.	Application Fee: 0.0005 (1/20 of 1%) of total application amount, not to exceed \$5000. Payable with request for refunding financing.	Application Fee: 0.0005 (1/20 of 1%) of total application amount, not to exceed \$5000. Payable with request for refunding financing.
Administrative Fee: Waived.	Administrative Fee: 0.002 (2/10 of 1%) of total amount of bonds issued. The application fee is deducted from the administrative fee.	Administrative Fee: Waived.	Administrative Fee: 0.002 (2/10 of 1%) of total amount of bonds issued. The application fee is deducted from the administrative fee.
SBAF Subsidy: Up to a maximum amount of \$210,000 to help pay for the costs of issuance and Other Fees.	SBAF Fee: 0.01 (1%) of total amount of tax-exempt bonds issued; .003 (3/10 of 1%) of total amount of taxable bonds issued, then .007 (7/10 of 1%) upon conversion of taxable bonds to tax-exempt. Payable upon closing.	SBAF Subsidy: None.	SBAF Fee: Recalculated to determine if additional fees are owed based on formula for new bond issues.
Other Fees: State Treasurer’s Office – Public Finance Division (PFD) agent for sale fee; California Debt Limit Allocation Committee (CDLAC); California Debt and Investment Advisory Commission (CDIAC); CPCFA’s issuer’s counsel reimbursement, and any other fees applicable. Payable upon closing.	Other Fees: State Treasurer’s Office – Public Finance Division (PFD) agent for sale fee; California Debt Limit Allocation Committee (CDLAC); California Debt and Investment Advisory Commission (CDIAC); CPCFA’s issuer’s counsel reimbursement, and any other fees applicable. Payable upon closing.	Other Fees: State Treasurer’s Office – Public Finance Division (PFD) agent for sale fee; California Debt and Investment Advisory Commission (CDIAC); CPCFA’s issuer’s counsel reimbursement, and any other fees applicable. Payable upon closing.	Other Fees: State Treasurer’s Office – Public Finance Division (PFD) agent for sale fee; California Debt and Investment Advisory Commission (CDIAC); <u>*CPCFA’s issuer’s counsel reimbursement, and any other fees applicable. Payable upon closing.</u> <u>*CPCFA will absorb the first \$5000 of this cost from the Administrative Fee. If this fee is insufficient to cover this cost, the Borrower must reimburse the full amount.</u>